

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Tennessee Broadcasting Partners)	CSR-7596-A
)	
For Modification of the Television Market for)	
WBBJ-TV, Jackson, Tennessee)	

ORDER ON RECONSIDERATION

Adopted: May 11, 2010

Released: May 12, 2010

By the Chief, Media Bureau:

I. INTRODUCTION

1. Tennessee Broadcasting Partners (“Tennessee Broadcasting”), a wholly-owned subsidiary of Bahakel Communications and licensee of ABC-affiliate WBBJ-TV (Channel 43), Jackson, Tennessee (“WBBJ”), has filed a petition for partial reconsideration¹ of the Media Bureau’s decision partially denying its market modification request.² WBBJ is located in the Jackson, Tennessee Designated Market Area (“DMA”). WBBJ requests that the Bureau reconsider its decision and modify its market to include eight of the eleven communities the Bureau declined to add in the underlying *Bureau Order*. No oppositions to WBBJ’s reconsideration petition have been filed.

II. BACKGROUND

2. Section 614(h)(1)(C)(i) of the Communications Act authorizes the Commission to add communities to, or delete communities from, a television station’s market³ “to better effectuate the

¹ Tennessee Broadcasting Partners’ Petition for Partial Reconsideration, filed April 9, 2008 (“*Petition*”).

² *Tennessee Broadcasting Partners, Modification of the Television Market for WBBJ-TV/DT, Jackson, Tennessee*, Memorandum Opinion and Order, 23 FCC Rcd 3928 (MB, rel. Mar. 10, 2008) (“*Bureau Order*”).

³ Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. §534(h)(1)(C). Section 76.55(e) of the Commission’s rules requires that a commercial broadcast television station’s market be defined by Nielsen Media Research’s designated market areas (“DMAs”). *See Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules*, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 6201, 6224 ¶ 48 (1996), *modified by*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999) (“*Modification Second Report and Order*”).

purposes of this section.”⁴ In determining whether to grant a market modification petition, the Commission looks to four nonexclusive factors which the Act requires that we apply.⁵ A detailed description of these market modification provisions and the Commission’s related regulations are set forth in the *Bureau Order*.⁶

3. In its original market modification petition, WBBJ had sought to add thirty-seven cable communities to its market.⁷ The Bureau granted the petition as to twenty-six of those communities and denied the addition of eleven. WBBJ now seeks reconsideration with respect to eight of the eleven denied communities, which are located in Kentucky and Mississippi.⁸ WBBJ seeks to add Hazel, Murray, Mayfield, Hickman, and Fulton (“the Kentucky Communities”), all located in the Paducah-Cape Girardeau-Harrisburg DMA (“Paducah DMA”), and the communities of Burnsville, Iuka, and Belmont (“Mississippi Communities”) from the Columbus-Tupelo-West Point DMA (“Columbus DMA”).⁹

4. WBBJ asserts it provided sufficient evidence to satisfy the statutory market modification criteria for each of the eight communities at issue. We have analyzed the communities giving particular attention to the statutory factors WBBJ emphasizes in its petition.¹⁰ We conclude that WBBJ’s digital coverage contour map shows significant improvement and now sufficiently covers all of the communities but one. Therefore, we will add the communities of Hazel, Murray, Mayfield, Hickman, Fulton, Iuka and Burnsville to WBBJ’s market, but we decline to add the community of Belmont, Mississippi.

⁴ 47 U.S.C. § 534(h)(1)(C)(i).

⁵ See 47 U.S.C. § 534(h)(1)(C)(ii)(I) - (IV).

⁶ See *Bureau Order*, 23 FCC Rcd 3929-3932, ¶¶ 2-4.

⁷ See Petition for Special Relief of Tennessee Broadcasting Partners, filed Oct. 4, 2007, at Ex. A (“*Original Petition*”). WBBJ sought to add the following communities in the Nashville DMA: Camden (Benton County, TN), Parsons, Perryville and Scotts Hill (Decatur County, TN), Cottage Grove, Henry, McKenzie, Paris, and Puryear (Henry County, TN), Linden and Lobelville (Perry County, TN), and Clifton, Collinwood, and Waynesboro (Wayne County, TN); in the Memphis DMA: Corinth and Rienzi (Alcorn County, MS), Alamo (Crockett County, TN), Dyersburg and Newbern (Dyer County, TN), Bolivar (Hardeman County, TN), Brownsville (Haywood, TN), Ripley (Lauderdale, TN), Selmer (McNairy County, TN), the unincorporated portions of McNairy County itself, Covington (Tipton County, TN); in the Paducah-Cape Girardeau-Harrisburg DMA: Hazel and Murray (Calloway County, KY), Fulton and Hickman (Fulton County, KY), Mayfield (Graves County, KY), Tiptonville (Lake County, TN), Union City (Obion County, TN), and Dresden and Martin (Weakley, TN); in the Columbus-Tupelo-West Point DMA: Belmont, Burnsville, and Iuka (Tishomingo, MS). See *id.*

⁸ See *Petition* at 1-2. WBBJ has not sought reconsideration for the following communities which the Bureau also did not include in WBBJ’s market: Rienzi (Alcorn County, MS), Covington (Tipton County, TN), and Ripley (Lauderdale, TN), all in the Memphis DMA. See *Petition* at 2 n.3.

⁹ See *Petition* at 1-2.

¹⁰ WBBJ has not contested our finding that it met the first statutory factor with respect to all eight communities at issue here. The first factor asks “whether the station ... ha[s] been historically carried on the cable system or systems within [the] communit[ies]” it seeks to add to its market. 47 U.S.C. § 534(h)(1)(C)(ii)(I) In the *Bureau Order*, we concluded based on the record that WBBJ had demonstrated consistent historic cable carriage for all of these communities. See *Bureau Order*, 12 FCC Rcd at 3932, ¶ 5, 3956, ¶¶ 74-75.

III. DISCUSSION

A. The Kentucky Communities

5. Having reconsidered our prior decision in light of the new circumstances, we conclude that the Kentucky communities of Hazel, Murray, Mayfield, Hickman, and Fulton should be added to WBBJ's market. With respect to the first statutory factor, we found in the *Bureau Order* that WBBJ had a stable history of carriage in the Kentucky communities since 1992.¹¹

6. The second statutory factor asks whether WBBJ provides coverage or other local service to the Kentucky communities. To analyze a station's coverage or local service, we look to whether a station covers the communities at issue with a signal of sufficient intensity,¹² the station's proximity to the communities in terms of mileage, and its provision of programming with a distinct nexus to the communities. In the *Bureau Order*, we concluded that WBBJ did not reach these communities with its signal. However, we based our assessment on WBBJ's analog contour map – which predicted virtually no coverage of the communities at issue; furthermore, WBBJ conceded as much, stating that “[t]he Paducah Communities lie just a few miles beyond WBBJ's standard Grade B contour and just outside the areas that receive Grade B service according to a Longley-Rice analysis.”¹³ Since the issuance of our *Order*, WBBJ has switched to transmitting in digital, and it directs us to its digital Longley-Rice coverage map which predicts that it now transmits a 41 dBu signal over “all of Fulton and Hazel, most of Murray, much of Hickman and part of Mayfield.”¹⁴ We find that WBBJ's Longley Rice maps showing the extent of its 41 dBu signal demonstrate that it provides service to these five Kentucky communities.

7. With respect to the second factor, we found WBBJ directed only a minimal level of

¹¹ See *supra* note 10.

¹² To demonstrate signal coverage, the Commission requires the submission of Grade B contour maps delineating a station's technical service area or the submission of Longley-Rice propagation curves, as the latter provides a more accurate representation of a station's technical coverage area. See 47 C.F.R. § 76.59(b)(2); *Modification Second Report and Order*, 14 FCC Rcd at 8387-88, ¶¶ 49-50.

¹³ *Bureau Order* at 3936, ¶ 16 n.46 (citing Unified Reply to Oppositions to Petition for Special Relief by Tennessee Broadcasting Partners, filed Nov. 29, 2007, at 15 (“Reply”)).

¹⁴ *Petition* at 6 & n.13 (citing *Original Petition*, Ex. B “FCC & Longley Rice Predicted Coverage, Station WBBJ-DT”). While the Grade B contour defined an analog television station's service area, see 47 C.F.R. § 73.683(a), with the completion of the full power digital television transition on June 12, 2009, there are no longer any full power analog stations. Instead, as set forth in Section 73.622(e), a station's DTV service area is defined as the area within its noise-limited contour where its signal strength is predicted to exceed the noise-limited service level – which for UHF stations is 41 dBu. See 47 C.F.R. § 73.622(e). Accordingly, the Commission has treated a digital station's noise limited service contour as the functional equivalent of an analog station's Grade B contour. See *Report To Congress: The Satellite Home Viewer Extension and Reauthorization Act of 2004; Study of Digital Television Field Strength Standards and Testing Procedures*, 20 FCC Rcd 19504, 19507, ¶ 3, 19554, ¶ 111 (2005); *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Implementation of Section 340 of the Communications Act*, Report and Order, 20 FCC Rcd 17278, 17292, ¶ 31 (2005). See also *Lenfest Broadcasting, LLC*, 19 FCC Rcd 8970, 8974, ¶ 7 n.27 (MB, rel. May 20, 2004) (“For digital stations operating on channels 14-69 [UHF stations], for market modification purposes the 41 dBu DTV service area contour is the digital equivalent of an analog station's Grade B contour.”).

programming to these communities.¹⁵ WBBJ does not take issue with our factual finding, but argues its coverage is proportional to the small size and rural nature of these communities and that we should give more weight to its weather coverage given the frequency of severe weather in the region.¹⁶ We take note that WBBJ does include all of these communities on its weather map.¹⁷ WBBJ also argues that its closer proximity to the Kentucky communities than the in-market ABC affiliate, WSIL, makes it the more likely affiliate to cover important news occurring there.¹⁸ Nevertheless both stations lie at considerable distances from these communities.¹⁹ We generally would not conclude that WBBJ's slightly greater proximity makes it the more likely affiliate to cover news in the region, especially given that WBBJ has not provided regular news coverage for these communities. Nor can we grant market modifications on the basis of promised or potential future coverage.²⁰ On the other hand, it is noteworthy that WSIL has filed no opposition to WBBJ's petition nor described the amount of local coverage programming that it airs.

8. The fourth statutory factor requires us to look at evidence of viewing patterns in cable and non-cable households. We previously found that WBBJ acquired lower ratings than WSIL in every Kentucky county at issue.²¹ Our initial analysis was based on 2006 Nielsen ratings data supplied by WBBJ. That data showed that WBBJ achieved ratings greater than four in-market stations in Calloway County (Hazel and Murray),²² shares "nearly equal" to three other stations in Fulton County (Fulton and

¹⁵ WBBJ's story coverage was listed by county for Calloway (6 stories over approximately 4.6 years) and Fulton (three stories over approximately 1.9 years) but appeared to identify two stories for the community of Murray, two for Fulton, and none for Hazel, Hickman or Mayfield. See *Original Petition* at Ex. C, Sample WBBJ Local News Segments Targeted to the Cable Communities.

¹⁶ See *Petition* at 4-5.

¹⁷ See *Reply* at 16 & n.33 (citing Ex. G-1).

¹⁸ *Petition* at 4. WBBJ goes on to argue that WSIL's failure to demonstrate its provision of local service to these communities should weigh in WBBJ's favor under the third statutory factor. *Petition* at 6-7. That factor may enhance a station's claim where it could be shown that other stations do not serve the communities at issue. See *Group W Television, Inc.*, 10 FCC Rcd. 2737, 2741, ¶ 23 (CSB, rel. Mar. 9, 1995); see also *Northstar Television of Providence, Inc.*, 11 FCC Rcd 1736, 1738-39, ¶ 15 (CSB, rel. Feb. 12, 1996). However, our precedent confirms that WBBJ would bear the burden of demonstrating WSIL's failure to provide local service to these communities. See *Guy Gannett Comm., Inc.*, 13 FCC Rcd. 23470, 23478-79, ¶ 23 (CSB, rel. Dec. 4, 1998). Because WBBJ has failed to make this showing, we continue to disregard the third statutory factor in our analysis.

¹⁹ Fulton, Hazel, Hickman, Murray and Mayfield lie 61, 66, 67, 73 and 77 miles from Jackson, Tennessee and 86, 86, 88, 79 and 69 miles from WSIL's community of license of Harrisburg, Illinois. *Bureau Order* at 3956, ¶ 75.

²⁰ See *Budd Broadcasting Company, Inc.*, 13 FCC Rcd 15462, ¶ 16 (CSB, rel. Aug. 2, 1998) (evaluation must be based on "the programming being aired" rather than "programming that may or may not be aired at some future date").

²¹ See *Bureau Order* at 3956, ¶ 75. Nielsen provides its viewership data by county, not community.

²² *Petition* at 7. In Calloway County, WBBJ garnered total share and cume values of 2/17, whereas the in-market ABC-affiliate WSIL earned 3/32, and the other in-market stations' ratings were: WPSD (32/71), KFVS (5/41), KBSI (3/21), WDKA (1/17), WQWQ (1/13), WKMU (1/10) and WKPD (-/3). See *Original Petition* at Ex. F, Nielsen 2006 County Coverage Study, Calloway.

Hickman),²³ and no total share/cume values for Graves County (Mayfield).²⁴ Our current review of 2009 Nielsen ratings show that WBBJ's position has declined in both Calloway County²⁵ and Fulton County.²⁶ Finally, WBBJ continues to achieve no total share/cume values in Graves County. These values do not bolster WBBJ's contention that it "is the only station proven to provide significant local service to the Kentucky communities."²⁷ Nevertheless, Kentucky residents evidently have some interest in viewing WBBJ.

9. Having reconsidered our decision, we will add these communities to WBBJ's market given the station's much improved signal coverage and its historic carriage on the cable systems serving these communities. Our decision recognizes that the residents of these rural border communities view WBBJ.²⁸ Furthermore, we find it significant that neither the affected cable systems nor WSIL have opposed WBBJ's petition for reconsideration.

B. The Mississippi Communities

10. In its Petition, WBBJ argues that its showing under the second, third and fourth factors should have weighed in favor of adding the Burnsville, Iuka and Belmont, Mississippi (Tishomingo County, Columbus DMA) communities to its market.²⁹ Factors similar to those described above motivate our inclusion of the Mississippi communities of Iuka and Burnsville in WBBJ's market, but confirm our rejection of Belmont.

11. With respect to WBBJ's history of carriage, we noted in the *Bureau Order* that WBBJ had been consistently carried in all three communities.³⁰ With respect to the second factor, WBBJ's Longley-

²³ *Petition* at 8. In Fulton, while WBBJ earned total share and cume values of 1/19, in-market affiliate WSIL earned 1/23 and the following values were earned by other in-market stations KFVS (14/88), WPSD (37/82), KBSI (2/27), WKMU (1/23), WDKA (1/22). *See Original Petition* at Ex. F, Nielsen 2006 County Coverage Study, Fulton.

²⁴ *See Petition* at 8 n.20.

²⁵ In Calloway County, WBBJ now garners total share and cume values of 1/10, and four Paducah DMA stations now achieve higher ratings than WBBJ (as opposed to only three in 2006): the in-market ABC-affiliate WSIL earns 4/41, and the other in-market stations' ratings are: WPSD (23/78), KFVS (6/46), KBSI (3/43), WDKA (1/15), WKMU (1/9), and WQWQ (-/8). *See Nielsen 2009 County Coverage Study*, Calloway.

²⁶ In Fulton, WBBJ now earns no total share value and a total cume value of 3 (-/3), whereas in-market affiliate WSIL now earns 1/22 and the following values are earned by other in-market stations WPSD (29/99), KFVS (9/93), KBSI (5/56), WQWQ (-/22), WDKA (2/18), WKPD 2/10, and WSIU (-/10). *See Nielsen 2009 County Coverage Study*, Fulton.

²⁷ *Petition* at 3.

²⁸ In addition, both Hazel and Fulton directly straddle the border between Tennessee and Kentucky. Hazel also shares a cable system with Puryear, Tennessee, a community we previously added to WBBJ's market. *See Bureau Order* at 3953-54, ¶ 68. Meanwhile Fulton, Kentucky has ties to South Fulton, Tennessee directly across the border, and WBBJ has directed some high school football coverage on its "Fifth Quarter" sports show to these communities. *See Reply* at Appendix G-2.

²⁹ *See Petition* at 10-15.

³⁰ *See Bureau Order* at 3956, ¶ 74.

Rice contour map shows that its digital signal has greatly improved its coverage of Iuka and perhaps Burnsville, but the community of Belmont continues to receive no coverage, even after the transition.³¹

12. With respect to the fourth statutory factor, we previously relied on 2006 Nielsen viewership data to analyze WBBJ's ratings in Tishomingo County.³² At the time, WBBJ garnered only slightly higher ratings than in-market ABC-affiliate WKDH, but received better ratings than two in-market stations.³³ WBBJ argues these ratings demonstrated that these communities are just as likely to turn to WBBJ as they are to the in-market stations.³⁴ However, Nielsen's 2009 data reveals that WBBJ now receives lower ratings than all Columbus-Tupelo DMA stations even though there is some viewership.³⁵

13. Finally, WBBJ argues we improperly weighed the third statutory factor against it.³⁶ In the *Bureau Order*, we noted that Congress did not intend this factor to bar a station's claim, but "intended [it] to enhance a station's claim where it could be shown that the other stations [did] not serve the communities at issue."³⁷ Our precedent confirms that stations demonstrating provision of local programming to communities unserved by other stations can bolster their case for adding such communities to their market; however, it is WBBJ's burden to make such a showing.³⁸

14. Upon reconsideration, we will grant the addition of Burnsville and Iuka to WBBJ's market, but reject the addition of Belmont. As with the Kentucky communities, we decline to exclude Burnsville and Iuka from WBBJ's market given the station's much improved signal coverage and its historic cable carriage in these communities. However, we reject the addition of Belmont because it receives no signal coverage and we are presented with no other new facts warranting reconsideration of our decision denying this community. Our decision recognizes that residents of these rural border communities view

³¹ See *Petition* at 12 n.35 (citing *Original Petition* at Ex. B). Although Burnsville's coverage is not as clear as Iuka's, it is more proximate to Jackson than is Iuka and is situated roughly within WBBJ's noise limited service contour.

³² The 2006 data showed that WBBJ earned total share/total cume values of 2/21, whereas the ratings earned by other Columbus DMA stations included: WTVA (26/81), WCBI (5/61), WLOV (5/41), WKDH (1/17), and WMAE (- /15). See *Original Petition*, Ex. F, Nielsen 2006 County Coverage Study, Tishomingo.

³³ See *id.*

³⁴ See *Petition* at 14.

³⁵ The 2009 data shows that WBBJ obtained a total share/total cume value of 1/9 whereas the other in-market stations' ratings were: WTVA (23/78), WCBI (4/44), WLOV (3/28), WKDH (4/27), WMAE (1/10). See Nielsen 2009 County Coverage Study, Tishomingo

³⁶ *Petition* at 13 & n.36 (citing *Bureau Order* at 3956, ¶ 74). The third statutory factor inquires "whether any other television station that is eligible to be carried by a cable system in such community... provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community." 47 U.S.C. §534(h)(1)(C)(ii)(III).

³⁷ See *Bureau Order*, 12 FCC Rcd at 3947, ¶ 49 & nn.166-7 (citing *Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629, 8633, ¶ 23 (CSB, rel. Aug. 11, 1995); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520, 17526, ¶ 13 (CSB, rel. Oct. 30, 1997)). We found this criterion inapplicable in the *Bureau Order*. See *Bureau Order*, at 3947, ¶ 49, 3951, ¶ 62 – 3957, ¶ 75.

³⁸ See *supra* note 18.

WBBJ. Furthermore, neither WKDH nor the affected cable systems have opposed WBBJ's petition for reconsideration.

V. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. §534(h), that the Petition for Partial Reconsideration filed by Tennessee Broadcasting Partners, a wholly-owned subsidiary of Bahakel Communications and licensee of ABC-affiliate WBBJ-TV, **IS GRANTED IN PART AND DENIED IN PART**; the communities of Hazel, Murray, Mayfield, Hickman, and Fulton from the Paducah-Cape Girardeau-Harrisburg DMA, and the communities of Burnsville and Iuka from the Columbus-Tupelo-West Point DMA are added to WBBJ-TV's television market while the addition of Belmont, Mississippi is denied.

16. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.³⁹

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

³⁹ 47 C.F.R. §0.283.